

STATE OF MICHIGAN
COURT OF APPEALS

ED VOGLER & SONS, INC.,

Petitioner-Appellee,

v

DEPARTMENT OF TREASURY,

Respondent-Appellant.

UNPUBLISHED

November 10, 2005

No. 254761

Tax Tribunal

LC No. 00-287578

Before: Gage, P.J., and Hoekstra and Murray, JJ.

PER CURIAM.

Respondent appeals as of right from an opinion and judgment of the Michigan Tax Tribunal that reduced the amount of an assessment from \$28,581 plus interest to \$1,661.96 plus interest. The dispute stems from petitioner's practice of offering a discount to credit customers for paying their balance promptly. The parties disagreed concerning how the discount affected petitioner's sales tax liability. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

"Issues concerning the interpretation and application of statutes are questions of law that this Court decides de novo." *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). In the absence of fraud, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal erred in applying the law or adopted a wrong legal principle. *Id.* The tribunal's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record. *Id.*

Respondent argues that when one of petitioner's customers accepted a discount by paying within the specified period, petitioner effectively collected sales tax based on the full amount of the sale, but only remitted a portion of that amount to respondent. According to respondent, petitioner was prohibited from enriching itself in this manner pursuant to MCL 205.73(4), which provides that "[a] person other than the state may not enrich himself or herself or gain any benefit from the collection or payment of the [sales] tax." We disagree.

The type of discount offered by petitioner is essentially a cash discount of the type offered by the retailer in *Standard Oil Co v Michigan*, 283 Mich 85; 276 NW 908 (1937.) There, the retailer gave the buyer the option to pay either the invoice price or the invoice price less a discount if paid within a specified period of time. The trial court concluded that if the buyer paid the discount price within the period, the amount paid is the "gross proceeds" of the transaction.

Id. at 88. The Supreme Court agreed, stating that in its “opinion a cash discount, if taken by the customer, is no part of the ‘gross proceeds’ of a retail sale under the definition of ‘gross proceeds’ as contained in [the General Sales Tax Act, MCL 205.51 *et seq.*].” *Id.* at 91.

As in *Standard Oil, supra*, when one of petitioner’s customers accepted a discount for prompt payment, the amount of the discount was not part of the gross proceeds of the sale. Although any reimbursement of tax from the customer must be remitted to the state, *Sims v Firestone Tire & Rubber Co*, 397 Mich 469, 476; 245 NW2d 13 (1976), respondent’s argument that petitioner failed to remit taxes that it collected assumes that the original amount of the tax was unaffected by the discount. We conclude that the tribunal did not err in applying the law or adopt a wrong legal principle when it rejected respondent’s position in this regard and determined that petitioner was entitled to allocate the discount between the merchandise and the sales tax so that it accurately reflected the gross proceeds and resulting tax liability.

Affirmed.

/s/ Hilda R. Gage
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray